IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE NINETEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

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WRIT PETITION NO : 13935 of 2004

Between:

1 V. Madan Mohan S/o. V. Keshavulu
R/o. 18/669, Santoshnagar, Miryalaguda, Nalgonda District.
2 K. Ramu S/o. Saidaiah
Shanthinagar, Miryalaguda, Nalgonda District.

..... PETITIONERS

AND

1 Govt of A.P., rep. by Prl. Secretary to Govt., Municipal Administration, Secretariat, Hyderabad.
2 The Commissioner, Miryalaguda Municipality, Nalgonda District at Nalgonda.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of writ of Certiorari to call for the records pertaining to the G.O.Ms.No. 282 MA Dt. 24.07.2004 from the Office of the Respondent No.1 herein and may be pleased to issue a Writ of Certiorari quashing the G.O.Ms. No. 282 MA Dt. 24.07.2004 declaring the same as void, illegal, arbitrary and contrary to the principles of natural justice and equity and to issue any other writ or direction to which this Hon'ble High Court deems just and proper under the circumstances of the case.

Counsel for the Petitioner:MS.A.PULLA REDDY & ABHISHEK REDDY

Counsel for the Respondent No.1: GP FOR GAD & MMA

Counsel for the Respondent No.2: MR. D.SRINIVAS, Standing Counsel

The Court at the stage of admission made the following ORDER:

This is a second round of litigation. Earlier, the petitioners have been suspended from the Council of the ward members of the Miryalaguda Municipality, through G.O.Ms.No.342, dated
08-07-2003, which was issued in exercise of powers conferred under sub-section (1) of Section 59-A of the Andhra Pradesh Municipalities Act, 1965 (for short "the Act") and the same was challenged by them in WP.No.14778 of 2003 before this Court. While setting aside the said G.O., this Court kept it open to the first respondent to pass appropriate orders strictly in compliance with the provisions of Section 59-A of the Act. After disposal of the said writ petition, the impugned G.O.Ms.No.282, dated 24-07-2004 was issued suspending the petitioners herein for their misbehaviour of using unparliamentary language against the second respondent-Commissioner, Miryalaguda Municipality duly following the procedure. Hence, the present writ petition.

The learned Government Pleader for Municipal Administration and Urban Development appearing for the first respondent filed a counter stating that the first respondent
re-examined the whole case thoroughly with reference to the explanation submitted by the petitioners, the Collector's report dated 13-05-2003, the Chairperson's report and the protest of the Employees Union by resorting to pen down strike against the petitioners behaviour and language. Further, a criminal case was registered against the petitioners in Crime No.30 of 2003 for the offence under Sections 363, 342 and 506 read with 34 IPC and the same is pending before the Judicial First Class Magistrate, Miryalaguda and that the above said reports and the crime registered indicate that the petitioners behaviour was in the form of terrorism, which will hinder

the democratic process of functioning of the Government and basing upon the same, the impugned G.O. came to be passed.

Unfortunately, none of the grounds raised in the counter were considered to be the basis for passing the impugned Government Order. It is well settled in **Mohinder Singh Gill and another v. The Chief Election Commissioner, New Delhi and others** that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order is bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out.

From a perusal of the grounds mentioned in the impugned order shows that they are only the repetition of the show cause notice issued earlier. Even in the show cause notice, there was no allegation against the second petitioner except stating that he shouted in high pitch with an unparliamentary language and willfully misbehaved and abused the position of the second respondent. This Court in **AMJADULLAH KHAN v. GOVERNMENT OF ANDHRA PRADESH, MUNICIPAL ADMINISTRATION AND URBAN DEVELOPMENT DEPARTMENT** held as under:

> "The power conferred on the Government is a drastic power, which needs to be exercised in a rare case having regard to the objects for which the provision was inserted by the Legislature by A.P. Act No.13 of 1999. Unfortunately, the time during which the Mayor, Deputy Mayor or a Member can be placed under suspension is not there. The Government cannot keep them under suspension perennially, say for a term of five years. I am also of the considered opinion that after insertion of Article 243U of Constitution (Seventy-fourty) Amendment Act, 1992, unless and until it is considered to be absolutely necessary, an elected body cannot be suspended or dissolved. Similarly, an elected member cannot be suspended on mere surmises."

In view of the same, the impugned G.O. passed by the Government is set aside.

The writ petition is accordingly, allowed. No costs.

19th AUGUST, 2004.

Note: furnish c.c. in two days.

B/o

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To

1 The Principal Secretary to Government, Government of A.P., Municipal Administration, Secretariat, Hyd.
2 The Commissioner, Miryalaguda Municipality, Nalgonda District at Nalgonda.

3 Two CCs to the Government Pleader for Municipal Administration and Urban Development, A.P. High Court Buildings, Hyderabad.

4 Two CD copies.